



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,421	07/21/2003	Patrick Timothy Yerby	2003-0071	9177

7590 10/20/2006

Robert F. Frijouf  
Frijouf, Rust & Pyle, P.A.  
201 East Davis Boulevard  
Tampa, FL 33606

EXAMINER

NICOLAS, FREDERICK C

ART UNIT PAPER NUMBER

3754

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

10/625,421

### Applicant(s)

YERBY ET AL.

### Examiner

Frederick C. Nicolas

### Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 6,18,20-40,48 and 50 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41-47 and 49 is/are allowed.
- 6) ☒ Claim(s) 1-5,10,11 and 19 is/are rejected.
- 7) ☒ Claim(s) 7-9,12-17 is/are objected to.
- 8) ☒ Claim(s) 1-50 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/12/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

***Election/Restrictions***

1. Applicant's election without traverse of Species of Group B, FIGS. 34-54, claims 1-3,4-5,7-17,19,41-47 and 49 in the reply filed on 8/7/2006 is acknowledged.
2. Claims 6,18,20-40,48,50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Further, claim 6 has been withdrawn and added to the nonelected invention, since claims 6,18 are directed to a nonelected Species A. Election was made **without** traverse in the reply filed on 8/7/2006.

***Claim Objections***

3. Claim 9 is objected to because of the following informalities: it appears that in claim 9, line 1, "claim 11" should be --claim 1--. For examining purposes, claim 1 will be considered instead of claim 11 as dependency. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5,10-11,19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoagland 3,933,283.

Hoagland discloses a locking aerosol dispenser for an aerosol dispensing device having an aerosol valve (14) for controlling the flow of an aerosol product from an aerosol container (12), which comprises an actuator (10) secured to the aerosol valve

for displacing the aerosol valve from a biased closed position to an open position to discharge the aerosol product (col. 4, ll. 9-52), the actuator being rotatable into a first rotational position relative to the aerosol container for enabling the actuator to open the aerosol valve upon movement of the actuator for discharging the aerosol product (col. 5, ll. 53-68 onto col. 6, ll. 1-29), the actuator being rotatable into a second rotational position relative to the aerosol container for inhibiting the actuator from opening the aerosol valve (col. 6, ll. 21-29), a key aperture (54) cooperating with a key (50) for enabling movement of the actuator to open the aerosol valve for discharging the aerosol product, the actuator is integral with an aerosol overcap (30).

***Allowable Subject Matter***

6. Claims 41-47,49 are allowed.
7. Claims 7-9,12-17, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

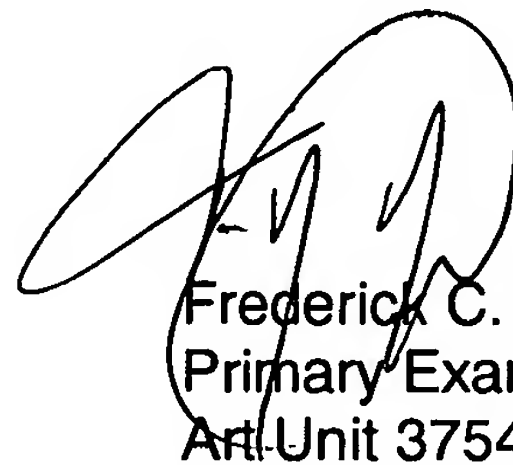
***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kaufman et al. 6,161,736 and Nigro 3,698,604 disclose other types of locking aerosol dispenser.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
October 10, 2006



10/10/06  
Frederick C. Nicolas  
Primary Examiner  
Art Unit 3754